



PUBLIC NOTICE

Federal Communications Commission
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DA 14-7
January 6, 2014

TRIBAL MOBILITY FUND PHASE I AUCTION

STATUS OF SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTION 902

AU Docket No. 13-53

1. By this Public Notice, the Wireless Telecommunications Bureau and Wireline Competition Bureau (collectively, the Bureaus) announce the status of the 15 short-form applications received for Auction 902. This auction, which is scheduled to be held on Tuesday, February 25, 2014, will award up to \$50 million in one-time Tribal Mobility Fund Phase I support.¹ This Public Notice also provides other important information and reminders relating to the auction.

I. SHORT-FORM APPLICATIONS

A. Status of Short-Form Applications

2. The short-form applications (FCC Form 180) for Auction 902 have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the categories listed below.

Complete 5 applications

Incomplete 10 applications

3. **Complete Applications.** Attachment A to this Public Notice lists the short-form applications for Auction 902 that are complete. Each of these applicants will become a qualified bidder provided that it maintains the accuracy of its short-form application as required by sections 1.65 and 1.21002(c) of the Commission's rules.²

¹ See Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902, *Public Notice*, AU Docket No. 13-53, DA 13-1672, 28 FCC Rcd 11628 (2013) (*Auction 902 Procedures Public Notice*); see also Tribal Mobility Fund Phase I Auction Rescheduled for February 25, 2014; Notice of Changes to Auction 902 Schedule Following Resumption of Normal Commission Operations, *Public Notice*, AU Docket No. 13-53, DA 13-2057, 28 FCC Rcd 14656 (2013).

² 47 C.F.R. §§ 1.65, 1.21002(c). Section 1.65 of the Commission's rules requires that whenever the information furnished in a pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate. 47 C.F.R. § 1.65(a). Section 1.21002(c) requires that any applicant that makes or receives a prohibited communication must report such communication in writing to the (continued....)

4. Designation of an application as complete indicates that the applicant has provided the certifications and basic information concerning its qualifications as required by the Commission's competitive bidding rules for participation in the auction. Under the Commission's two-phased auction application process, a winning bidder must submit after the close of the auction a long-form application, any final designation as an Eligible Telecommunications Carrier (ETC) that any Tribally-owned or -controlled applicant may still require, and an irrevocable stand-by letter (or letters) of credit to demonstrate its qualifications for Tribal Mobility Fund Phase I support.³ Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to receive Tribal Mobility Fund Phase I support. In the event that an applicant is found unqualified to be a recipient of Tribal Mobility Fund Phase I support, it will be liable for any obligations incurred as a result of its participation in the auction.⁴

5. **Incomplete Applications.** Attachment B to this Public Notice lists the short-form applications for Auction 902 found to be incomplete or otherwise deficient. Each of these applicants will receive overnight correspondence indicating the information that is required to make its application complete. To become a qualified bidder, each of these applicants must resubmit its application, having corrected any deficiencies, by the January 22, 2014, deadline.⁵ Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.21002(c) of the Commission's rules.⁶

B. Short-Form Application Changes and Resubmission

6. Each applicant whose application for Auction 902 has been identified as incomplete must address defects in its application during the resubmission window, which is now open.⁷ Corrected applications must be filed **prior to 6:00 p.m. Eastern Time (ET) on Wednesday, January 22, 2014**. This will be the only opportunity to cure application defects. Late resubmissions will not be accepted. If an application is incomplete or otherwise deficient after the resubmission deadline has passed, the applicant will not be permitted to participate in bidding.⁸

7. During this resubmission window, all applicants may make other minor changes as described below in more detail. We remind applicants that sections 1.65 and 1.21002(c) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application.⁹ Each applicant should amend its short-form application to furnish additional or corrected information as promptly as possible after a significant occurrence. To the extent that changes may be made directly in the electronic Form 180 at the time of the amendment, an applicant must modify

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Commission staff immediately, and in any case no later than five business days after the communication occurs. 47 C.F.R. § 1.21002(c).

³ See 47 C.F.R. §§ 54.1004(a), 54.1005(b)(1)-(2), 54.1005(b)(3)(v), 54.1007; *see also Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11678-87, paras. 177-203.

⁴ See 47 C.F.R. § 1.21004; *see also Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11691-92, paras. 212-15.

⁵ See 47 C.F.R. § 1.21001(d).

⁶ 47 C.F.R. §§ 1.65, 1.21002(c).

⁷ 47 C.F.R. § 1.21001(d); *see also Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11666-69, paras. 122-28, 135-37.

⁸ Any such applicant will retain its status as an applicant in Auction 902 and will remain subject to the Commission's rules prohibiting certain communications, 47 C.F.R. § 1.21002, but will not be eligible to bid.

⁹ 47 C.F.R. §§ 1.65, 1.21002(c).

its short-form application electronically.¹⁰ An applicant seeking to report changes outside of the resubmission window must submit a letter briefly summarizing the changes by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auction902@fcc.gov. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS). Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

8. The electronic Form 180 will not permit an applicant to make certain modifications to its application, e.g., change the applicant's name, change its legal classification, change its Study Area Code(s) (SAC(s)) or Tribal land(s) selections, change the certifying official, or change bidding credit eligibility.¹¹ Administrative and minor changes can be made, including, for example, deletion and addition of authorized bidders (up to a maximum of three), revision of addresses and telephone numbers of the applicant and its contact person, and changes to the responsible party. While changes can be made to ownership and agreement information,¹² we remind each applicant that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or disclosure of agreements that would constitute violations of section 1.21002.¹³ If any application is changed to effect a major amendment, such as a change in control,¹⁴ the applicant will be ineligible to bid in the auction.¹⁵

II. OTHER IMPORTANT AUCTION 902 INFORMATION

9. **Qualified Bidders.** Approximately three weeks after the resubmission deadline, following Commission review of resubmitted short-form applications, a public notice listing all applicants qualified to bid in Auction 902 will be released. The same public notice will also include bidding schedules for both the mock auction and Auction 902.

10. **Due Diligence.** Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Tribal Mobility Fund Phase I support submitted as a bid in Auction 902. We strongly encourage potential bidders to conduct their own research in order to determine the existence of pending administrative or judicial proceedings, including

¹⁰ During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, agreement information, and ownership information. During all phases of the application process, applicants have electronic access to make certain administrative changes, including updates to applicant address, responsible party address, contact information, and contact address.

¹¹ 47 C.F.R. § 1.21001(d)(4). The Commission's electronic Form 180 is designed to prevent inadvertent major changes by applicants. Therefore, applicants are not permitted to make changes to certain data fields after the short-form filing deadline, including applicant name, legal classification, bidding credit, and SAC(s) or Tribal land(s) selections.

¹² For more information on making administrative changes to an existing application, see "Minor Modifications to Short-Form Applications" and "Maintaining Current Information in Short-Form Applications" in the *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11666-67, paras. 122-28.

¹³ See 47 C.F.R. §§ 1.21001(d)(4), 1.21002.

¹⁴ See Letter to Koch Broadcasting Corp. and Birch Broadcasting Corp. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, and Peter H. Doyle, Chief, Audio Division, DA 06-38, 21 FCC Rcd 147 (2006) (dismissing short-form application due to major amendment changing control of applicant).

¹⁵ See 47 C.F.R. § 1.21001(d)(4).

pending rulemaking proceedings, that might affect their decisions regarding participation in the auction. Additionally, a potential bidder is responsible for assuring that, if it wins support, it will be able to build and operate facilities that fully comply with all applicable technical and legal requirements. For further details regarding due diligence, please refer to the *Auction 902 Procedures Public Notice*, section II.C.3.¹⁶

11. Prohibition of Certain Communications. The Bureaus remind applicants that section 1.21002 of the Commission's rules prohibits an applicant in a Mobility Fund auction from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit long-form applications for support, unless such applicants are members of a joint bidding arrangement identified on the short-form application(s) pursuant to section 1.21001(b)(3)-(4).¹⁷

12. This prohibition took effect as of the short-form application filing deadline, which for Auction 902 was December 5, 2013, at 6:00 p.m. ET, and extends until the long-form application deadline, which will be announced in a public notice released shortly following close of bidding.¹⁸ **The prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**¹⁹

13. We also emphasize that, for purposes of this prohibition, the term "applicant" is broad and encompasses the applicant, each party capable of controlling the applicant, including all officers and directors, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.²⁰ Thus, for example, a violation of section 1.21002 of the Commission's rules could occur when an individual serves as an officer and/or director for two or more competing applicants that have not disclosed an agreement on both short-form applications.²¹ Therefore, applicants should continue to take

¹⁶ See *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11655-56, paras. 81-87.

¹⁷ 47 C.F.R. §§ 1.21001(b)(3)-(4), 1.21002(b); see also *Connect America Fund*, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd 17663, 17807, para. 431 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

¹⁸ 47 C.F.R. §§ 1.21002(b), 54.1005(b)(1); see also *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11677-78, paras. 174-75.

¹⁹ See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628, para. 4 & n.19 (2004) (emphasizing that section 1.2105(c) applies to applicants regardless of whether they are qualified to bid), *order granted in part sub nom*, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *petition for review denied*, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008); Letter to Robert Pettit, [Esquire], from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, DA 00-2905, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant's controlling interest from coverage by the communication prohibitions of section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

²⁰ 47 C.F.R. § 1.21002(a).

²¹ See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (2005) (finding apparent violation of (continued....))

precautionary steps to prevent prohibited communications between any of the entities or persons covered by the prohibition.²²

14. If parties had agreed in principle on all material terms of a bidding agreement, those parties must have been identified on the short-form application under section 1.21001(b)(3), even if the agreement had not been reduced to writing.²³ If parties had not agreed in principle by the short-form application filing deadline on December 5, 2013, an applicant should not have included the names of those parties on its application, and must not have continued negotiations, discussions, or communications.²⁴

15. Limited Information Disclosure Procedures. We remind applicants that, under the limited information disclosure procedures in effect for Auction 902, the Commission is withholding from public release, until after the close of bidding and announcement of auction results, any information that may indicate specific applicants' interests in the auction—including, among other things, information from applicants' short-form applications regarding their interests in bidding areas in particular Tribal lands—and the identities of bidders placing bids or taking other bidding-related actions. Accordingly, communication with other applicants or public disclosure of such non-public information may violate the Commission's limited information disclosure procedures and the rule prohibiting certain communications, section 1.21002 of the Commission's rules.²⁵

16. Thus, applicants should refrain from communicating their specific interests in the auction not only to other applicants, but also to the public, financial analysts, or the press.²⁶ Examples of communications raising concern, given the limited information disclosure procedures in effect for Auction 902, would include an applicant's statement to the press that it is or is not interested in bidding in the auction.

17. Disclosure Obligations and Possible Sanctions. Sections 1.65 and 1.21002(c) of the Commission's rules require each auction applicant to maintain the accuracy and completeness of information furnished in its pending application.²⁷ In addition, section 1.21002(c) requires each auction applicant to report a prohibited discussion or disclosure regarding bids or bidding strategy to the Commission staff in writing immediately, but in no case later than five business days after the

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communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

²² See Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973, 11977-78, paras. 11-12 (1998). The Bureau cautions, however, that the mere existence of precautionary measures will not outweigh specific evidence of prohibited communications, nor will it preclude the initiation of an investigation when warranted. *Id.* at 11978, para. 13.

²³ 47 C.F.R. § 1.21001(b)(3).

²⁴ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (1995).

²⁵ 47 C.F.R. § 1.21002; see also *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11675, para. 163.

²⁶ The Commission has long expressed the concern that applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of non-public information relating to auctions, such as bids and bidding strategies. Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347-48 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

²⁷ 47 C.F.R. §§ 1.65, 1.21002(c); see also *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11667, para. 128.

communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.²⁸ Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.²⁹

18. Reporting Prohibited Communications. A party reporting a communication pursuant to sections 1.65 or 1.21002(c) must take care to ensure that any such report of a prohibited communication does not itself give rise to a violation of section 1.21002.³⁰ For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

19. To minimize the risk of inadvertent dissemination of non-public information, a party must file only a single report and file that report only with Commission personnel expressly charged with administering the Commission's auctions.³¹ Any report required by section 1.21002(c) must be filed consistent with the instructions set forth in the *Auction 902 Procedures Public Notice*.³² For Auction 902, any such report must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such report should be submitted by e-mail to auction902@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 6423, Washington, DC 20554. Any party submitting such a report should include a cover sheet to avoid the inadvertent dissemination of information contained in the report.

20. A party seeking to report such prohibited communications should consider submitting its report with a request that the report, or portions of the report, be withheld from public inspection.³³ Any such party is also encouraged to consult with the Auctions and Spectrum Access Division staff if it has any questions about the procedures for submitting such reports.³⁴ The *Auction 902 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.³⁵

21. Each applicant that is a winning bidder will be required to make disclosures in its long-form application regarding its qualifications for Tribal Mobility Fund Phase I support, which may include information on any agreements, understandings, or arrangements entered into relating to the competitive

²⁸ 47 C.F.R. § 1.21002(c); see also *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11652, paras. 71-73.

²⁹ 47 C.F.R. § 1.21002(c).

³⁰ 47 C.F.R. §§ 1.65, 1.21002.

³¹ *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11653, paras. 74-76.

³² *Id.*

³³ See 47 C.F.R. § 0.459 (specifying the procedures for requesting that materials or information submitted to the Commission be withheld from public inspection). If an applicant requests confidential treatment of a document, the cover page of the filing must prominently display that the applicant is seeking confidential treatment for that document. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459(a).

³⁴ See section III "Contact Information" below.

³⁵ See *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11666-67, paras. 122-28.

bidding process.³⁶ Any applicant found to have violated section 1.21002 of the Commission's rules may be subject to sanctions.³⁷ In addition, we remind applicants that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture and may be prohibited from participating in future auctions.³⁸

22. **Ex Parte Rule.** Applicants should also be aware that the Commission has generally treated short-form applications to participate in an auction process as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.³⁹

23. **Mock Auction.** All applicants found to be qualified bidders will be eligible to participate in a mock auction on Friday, February 21, 2014. The Bureaus encourage all qualified bidders to take advantage of this opportunity to become familiar with the FCC Auction System. In the public notice announcing the qualified bidders, the Bureaus will announce the bidding schedule for the mock auction. The mock auction will be conducted over the Internet.

24. **Electronic Bidding.** Applicants are reminded that only qualified bidders are eligible to bid and must have a SecurID[®] token to place bids, which the Commission will provide at no charge. SecurID[®] tokens, the "FCC Auction System Bidder's Guide," and the Auction Bidder Line phone number will be sent prior to the auction by overnight mail to the contact person at the contact address listed in the FCC Form 180.

25. Bidders can access the FCC Auction System over the Internet. The following software is required to use the FCC Auction System:

- Web Browser, either of the following is recommended:
 - Microsoft[®] Internet Explorer 8.0 or higher
 - Mozilla[®] Firefox[®] 3.5 or higher
- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- Minimum Screen Resolution: 1024 x 768

26. Currently, the Apple[®] Mac OS[®] is not supported.

27. **Post-Auction Procedures.** Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadline for filing the long-form application.⁴⁰ Winning bidders will use the FCC Auction System to submit the

³⁶ See 47 C.F.R. § 54.1005(b); *see also* 47 C.F.R. §§ 1.21001(b)(3)-(4).

³⁷ See 47 C.F.R. §§ 1.2109(d), 1.21002, 54.1007(c).

³⁸ 47 C.F.R. §§ 1.2109(d), 54.1007(c); *see also Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11654-55, para. 80.

³⁹ See Commission Announces that Mutually Exclusive "Short Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") are Treated as Exempt for Ex Parte Purposes, *Public Notice*, FCC 94-283, 9 FCC Rcd 6760 (1994).

⁴⁰ For more details on post-auction procedures, *see Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11677-93, paras. 174-219.

long-form application (FCC Form 680).⁴¹ Further filing instructions will be provided to auction winners at the close of the auction.

III. CONTACT INFORMATION

28. For specific questions about an applicant's incomplete status or its application deficiencies, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

29. For further information concerning Auction 902, contact:

General Auction Information

General Auction Questions
Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868

Auction 902 Legal Information

Auction Rules, Policies, Regulations, including
Reports of section 1.21002 Violations and
Application Modifications

**Wireless Telecommunications Bureau
Auctions and Spectrum Access Division**

(202) 418-0660
Patricia Robbins

General Universal Service Questions

Wireline Competition Bureau

(202) 418-7400
Alex Minard

Technical Support

Electronic Filing
FCC Auction System (Hardware/Software
Issues)

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

Tribal Issues

Additional information regarding Tribal lands
and Tribal governments

Office of Native Affairs and Policy

(202) 418-2930
native@fcc.gov

30. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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⁴¹ See 47 C.F.R. § 54.1005(b).